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TIMES PROPERTY

Bengaluru, March 20, 2020
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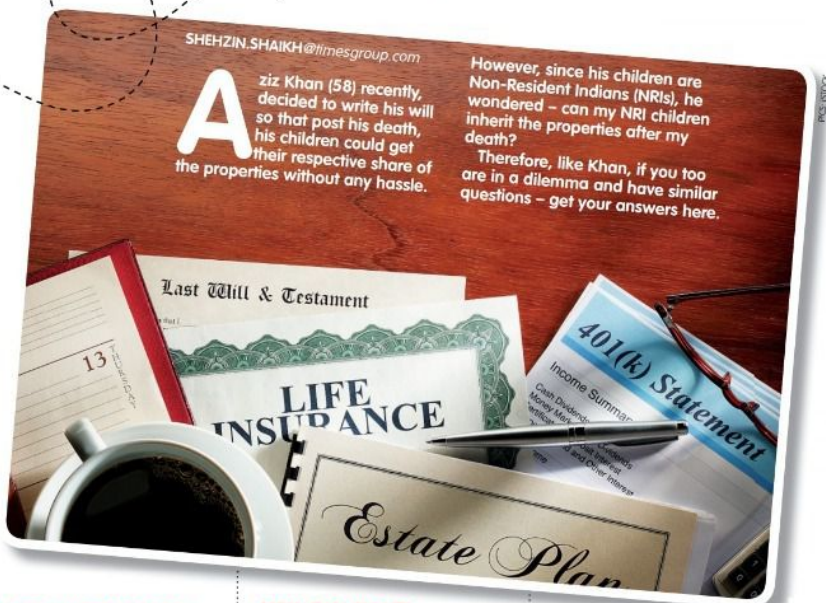
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A TALE *of* INHERITANCE

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Aziz Khan (58) recently decided to write his will so that post his death, his children could get their respective share of the properties without any hassle.

However, since his children are Non-Resident Indians (NRIs), he wondered – can my NRI children inherit the properties after my death?
Therefore, like Khan, if you too are in a dilemma and have similar questions – get your answers here.

An NRI can acquire any property in India, by way of inheritance from a person resident in India, or in accordance with the provisions of the foreign exchange law in force at the time of acquisition of such property by him. Read on



CAN AN NRI INHERIT ASSETS?

→ "An NRI can inherit any immovable property in India, residential or commercial and even an agricultural land or a farmhouse (which they cannot otherwise purchase) from a person resident in India, or a person resident outside India. However, it must be remembered that the person from whom the property is inherited should have acquired the same under the foreign exchange regulations applicable then. In case a property is inherited by a citizen of a foreign state who is a resident outside India, permission by the Reserve Bank of India (RBI) is necessary. Also, in case, an Indian parent dies intestate and leaves these assets without writing a will, then the NRI child will have to get a succession certificate from the Indian courts. This will require submission of various documents such as death certificate of the deceased, birth certificate of the successor, among others," says Anuj Puri, chairman, ANAROCK Property Consultants.

HOW CAN AN NRI TRANSFER TITLE OF AN INHERITED PROPERTY TO HIS NAME?

→ "The inheritance can be through a will or intestate. In Mumbai, Kolkata or Chennai, it is mandatory to obtain a probate. Even in other centres, it is desirable to obtain probate for a clear and marketable title in the future. The probate has to be lodged with the stamp authorities and then mutated in the land records in the ordinary course. In the case of intestate succession, one may need to produce a succession certificate or letter of administration. In case of a property in a co-operative society, one has to submit the probate, succession certificate or the letter of administration, as the case may be, for transfer of the property to the name of the legatee," mentions Mukesh Jain, founder, Mukesh Jain & Associates – a law firm.

WHAT ARE THE LAWS GOVERNING INHERITANCE OF IMMOVABLE PROPERTY?

→ The personal laws of the deceased from whom the NRI inherits the property and provisions of Foreign Exchange Management Act, 1999 (FEMA) are the laws governing the inheritance. Also, there is no tax implication, if an NRI inherits properties in India. So, neither the representative of the deceased, nor the inheritor, has to pay any tax on inheritance. "However, during the continued ownership, if the property is rented, the NRI has to pay taxes as per the Income Tax Act. Alternatively, if the NRI keeps the property vacant and uses it only during his stay in India, no tax will be levied. But if an NRI owns more than one property, then only 'one' property can be shown as self-occupied and there will be taxes levied on other properties. Even if the other property/properties are vacant, there will be income tax levied subject to the notional rent from the property," adds Ankit Kansal, founder and MD, 360 Realtors – a real estate investment consulting firm.

CAN AN NRI SELL AN INHERITED PROPERTY?

→ There is no stipulation stated in the Income Tax Act, 1961 that an NRI cannot sell the inherited assets. NRIs can sell inherited property to an Indian resident (except agricultural land, plantation property or farmhouse) without any permission from the RBI. "However, selling the inherited asset to a Non-Resident of India will require a prior permission from the RBI led by the inculation of foreign transactions. While selling the Inherited property to the Indian resident, the NRI is required to scrutinise the capital gains, if it is purchased before April 01, 2001, by the employment of indexation. In case of the asset purchased after April 01, 2001, the cost of purchase will be considered and taxed 20 per cent," says Kuldeep Tomar, director, AdvisoryMandi – a stock market advisory portal.

An NRI must also be aware of the restrictions on the repatriation of sale proceeds of inherited property. "As for residential property, the repatriation of sale proceeds is restricted to not more than two properties. And he must remember to submit the proof of inheritance, and the total repatriation amount must not exceed one million US dollars in a financial year. In case of a property sale by an NRI, the purchaser will have to deduct income tax under Section 195 of the Income Tax Act, on the taxable amount of capital gains at the rates applicable," adds Puri.

POINTS TO REMEMBER:

- ✓ Inheritance is allowed from anyone in the family of the NRI or even another NRI to whom the property belongs;
- ✓ There are no taxes imposed on an NRI when they receive an inherited property from someone. Neither does the transferor, dead or alive, has any such tax obligation to fulfil to make the transaction valid;
- ✓ An NRI should seek guidance from a lawyer and Chartered Accountant (CA) when transferring the title to his name;
- ✓ He should collect and keep the documents such as the registered will, purchased deed and registration documents, Encumbrance Certificate (EC) among others, handy;
- ✓ If an NRI plans to sell his inherited property, the transaction must be carried out as per applicable provisions of law including Foreign Exchange Management Act, Income Tax Act, 1961;
- ✓ If the time when the NRI inherited the property and the owner bought the property exceeds two years in the calculation, the NRI will be taxed based on long-term capital gains.